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In the Supreme Court of the United States

OCTOBER TERM, 1946.

No. [redacted] 21

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, *et al.*,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,
a corporation,
and
FARMERS GRAIN COMPANY,
a corporation, *et al.*,
Respondents.

MOTION FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

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Now come the Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers and Shop Laborers; F. O.

Fisher; Robert R. Reed; Fred Sauers, Jr.; E. D. Nevens; A. N. Murphy; W. C. Keiser, and B. M. Jewell, petitioners, by their counsel, and move the Court for an order authorizing abbreviation of the printed record in this case, and as reasons therefor assign the following:

The respondents herein are Toledo, Peoria & Western Railroad, a corporation, one of the defendants in the District Court, and Farmers Grain Company, a corporation; Eli Leman and E. J. Schiltz, d.b.a. Corn Belt Elevator; Ben C. Taber and E. C. Taber, d.b.a. Taber Lumber Co.; W. Howard Oaks, d.b.a. Oaks & Sons; E. F. Kent, Bessie Kent, Paul Kent, Lee Kent, Helen Kent and O. M. Lyon, d.b.a. Kent Lumber & Coal Co.; Gridley Farm Tool Co., Inc., a corporation; Sam R. Honegger, Frank Honegger and Ben A. Roth, d.b.a. Honeggers' & Co.; Wilber H. Boies and Henry Blessman, d.b.a. Boies & Blessman; Secor Elevator Company; El Paso Elevator Company, a corporation; Western Grain Company, a corporation; Meadows Grain & Coal Company, a corporation; C. W. Parry, d.b.a. C. W. Parry & Son; and Louis Shulman, d.b.a. Fairbury Iron and Metal Company, plaintiffs in the District Court.

This cause is a petition for a writ of certiorari to issue for review of the judgment and decree of the United States Circuit Court of Appeals for the Seventh Circuit reversing the decree of the District Court of the United States for the Southern District of Illinois, Northern Division (which appointed a receiver to operate the respondent railroad) and directing that a mandatory injunction issue requiring the railroad to provide transportation service to the respondent shippers, and that a supplementary injunction issue against the railroad's employees, these petitioners, and others.

Printing of the record was dispensed with on order of the Circuit Court of Appeals. The record consisted of the transcript of testimony in the District Court presented over a period of one month, aggregating 2,927 type-

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written pages, together with several hundred exhibits. The pleadings in the record are numerous, and many of them voluminous. The pleadings, exhibits, the transcript of testimony, and other papers, are in the possession of the Clerk of this Court.

In order to avoid the heavy and unproductive expense involved in printing the entire record for the purpose of this case, counsel for these petitioners proposed to all counsel in the case that they endeavor to stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for a writ of certiorari. A proposed stipulation was prepared by counsel for petitioners. Counsel for respondents have declined to agree to a stipulation and have proposed no alternative.

Two substantial questions will be presented by this case: *First*, the validity of the Circuit Court of Appeals' judgment and decree compelling the respondent railroad, by mandatory injunction, to provide transportation services to the respondent shippers, pursuant to Sections 1 (4), 1 (11), 1 (18) and 1 (20) of the Interstate Commerce Act (49 U. S. C., Secs. 1 *et seq.*), when the cause of the failure to provide transportation service is a labor dispute between the respondent railroad and its employees, in the course of which the employees have elected to withdraw from service in accordance with the provisions of the Railway Labor Act; *Second*, the validity of the Circuit Court of Appeals' judgment and decree requiring the issuance, supplementary to the mandatory injunction, of a sweeping injunction against the railroad's employees, their representatives and others, restraining all interference with the railroad's operations, without observance of the jurisdictional limitations contained in the Norris-LaGuardia Act (29 U. S. C., Secs. 101-115, inc.).

The District Court made elaborate findings of fact covering the essential developments during the whole period of the labor dispute between the respondent railroad and its

employees, from early in 1941 to date. These findings were not altered by the Circuit Court of Appeals, and they will, under the established procedure of this Court, be accepted as true. *Luckenbach v. McCahan Sugar Ref. Co.*, 248 U. S. 139.

The first question presented by this case is one of law, predicated upon the issues derived from the pleadings and the facts established by the District Court's findings. The second question, founded upon violations of the Norris-LaGuardia Act, will be resolved by consulting, so far as the record is concerned, the respondent shippers' complaint, the District Court's findings of fact, and the opinion of the Circuit Court of Appeals.

To print the entire record would involve the expenditure by these petitioners of many thousands of dollars, which is not essential to a determination of the substantial issues involved in the case. Such a determination can be had, without prejudice to the rights of any of the parties, by eliminating from the record to be printed the testimony and exhibits presented in the hearing in the District Court, and eliminating all of the pleadings and court orders, with the exception of the following:

February 20, 1946	Complaint.
March 20, 1946	Motion to Dismiss by all Defendants Other Than TP&W RR.
March 26, 1946	Amendment to the Complaint.
April 15, 1946	Answer of Defendant TP&W RR. Cross-Complaint of said railroad.
April 16, 1946	Answer to Plaintiffs' Complaint by all Defendants other than TP&W RR.
April 22, 1946	Additional Answer of all Defendants except TP&W RR and Answer of Defendant Brotherhoods and all Defendants other than Defendant Railroad, to Cross-Complaint.

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May 6, 1946	Motion of Defendant TP&W RR to Dismiss Plaintiffs' Action.
May 6, 1946	Motion by Defendants other than TP&W RR to Dismiss.
May 8, 1946	Order of Court.
May 16, 1946	Motion to Dismiss Cross-Complaint by Defendants other than TP&W RR.
June 6, 1946	Findings of Fact and Conclusions of Law filed by District Judge.
June 12, 1946	Notice of Appeal to Circuit Court of Appeals.
June 12, 1946	Order Directing that all Original Exhibits be forwarded to Clerk of Circuit Court of Appeals.
July 3, 1946	Supplemental Opinion of District Judge Adair filed in Circuit Court of Appeals on September 16, 1946.
Sept. 4, 1946	Opinion of Circuit Court of Appeals. Order of Circuit Court of Appeals.
Sept. 12, 1946	Motion of TP&W RR for immediate Issuance of Mandate together with the affidavit and suggestions attached thereto.
Sept. 13, 1946	Order for Immediate Issuance of Mandate.
Sept. 16, 1946	Order of the Circuit Court of Appeals directing its Clerk to forward the record to the Supreme Court of the United States.
Sept. 16, 1946	Designation of Record.
	Clerk's Certificate.
Sept. 18, 1946	Motion for Stay of Proceedings to Permit Application for Certiorari. Statement in Support.
Sept. 19, 1946	Order of Court recalling mandate and extending time for filing petitions for rehearing.

Sept. 20, 1946	Supplemental Designation of Record.
	Clerk's Certificate.
Sept. 30, 1946	Order of Court further extending time for filing Petitions for Rehearing.
Nov. 20, 1946	Order of Circuit Court of Appeals withdrawing its opinion of Sept. 4, 1946, and Vacating Judgment Entered Sept. 4, 1946.
Nov. 20, 1946	Judgment of Circuit Court of Appeals.
Nov. 20, 1946	Opinion of Circuit Court of Appeals.
Nov. 27, 1946	Order of Court denying Emergency Motion of Defendants-Appellees (petitioners herein) for stay of proceedings.
Nov. 27, 1946	Order of Circuit Court of Appeals that Mandate issue forthwith.
Nov. 27, 1946	Mandate of the Circuit Court of Appeals.
	Additional Designation of Record.
	Clerk's Certificate.
	Motion of TP&W RR and Order of District Court Dismissing its Cross-Complaint.
	Order of the District Court entered Dec. 5, 1946 at 12:15 P. M. for injunction.
	All motions filed in District Court by any of the parties relating to amendments or modification of the injunction order entered Dec. 5, 1946, together with all exhibits and affidavits attached thereto.

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Any orders which may be entered by the District Court on the Motions of Defendant Toledo, Peoria & Western RR., the Defendants Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926, *et al.*, or plaintiffs.

Dec. 20, 1946 Additional Designation of Record.

Clerk's Certificate.

There should be reserved to the several parties the right to refer in brief and argument, should they deem it necessary, to the exhibits of record, which exhibits have been certified by the Clerk of the Circuit Court of Appeals to this Court as the original exhibits, and have been filed with the Clerk of this Court.

For the reasons stated, these petitioners respectfully move this Honorable Court for the entry of an order authorizing abbreviation of the printed record in the manner herein proposed.

Louis F. Knoblock,
Harold C. Heiss,
Russell B. Day,
Attorneys for Petitioners.